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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION
18

19 SERGIO L. RAMIREZ, on behalf of
20 himself and all others similarly situated,

21 Plaintiff,

22 v.

23 TRANS UNION, LLC,

24 Defendant.
25

Case No. 12 cv-00632-JSC

Class Action

PLAINTIFF'S REPLY IN
FURTHER SUPPORT OF
MOTION TO CERTIFY CLASS

Date: May 22, 2014

Time: 2:00 p.m.

Place: Courtroom F

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1 **I. INTRODUCTION**

2 In its Opposition to Plaintiff Sergio L. Ramirez’s Motion to Certify Class, Defendant
3 Trans Union, LLC (Trans Union) attempts to defeat certification by mischaracterizing Plaintiff’s
4 claims and by improperly suggesting that Ramirez was a victim of unique circumstances. Dkt.
5 No. 120. As will be discussed in detail below, Trans Union’s arguments fail, and this matter
6 should be maintained as a class action.

7 Trans Union deals in volume. It sells tens of millions of credit reports and communicates
8 with tens of millions of consumers annually. It does not reinvent the wheel with respect to each
9 of these transactions. Rather, it uses a set of uniform procedures and boilerplate communications
10 with consumers. That is also the case when it comes to its OFAC Advisor alert product, which
11 is the subject of this lawsuit. Ramirez’s experience, as it relates to the claims he has actually
12 brought in this lawsuit, was not unique in any way.

13 It is undisputed that Trans Union sent to Ramirez and every member of the class a
14 “personal credit report,” in a standardized disclosure format which failed to actually disclose all
15 of the information in the class members’ files inasmuch as it did not reference OFAC at all. Trans
16 Union then followed that up with a misleading boilerplate form letter to class members regarding
17 OFAC, which failed to provide the required summary of their consumer rights, including the
18 right to dispute inaccurate or misleading OFAC information.¹

19 ¹ These two standardized communications form the basis for Plaintiff’s claims that Trans
20 Union furnished improper “file” disclosures with respect to OFAC alerts, in violation of the Fair
21 Credit Reporting Act (FCRA) at section 1681g(a) and (c), and the parallel provisions of
22 California Consumer Credit Reporting Agencies Act (CCRAA) at sections 1785.10 and 1785.15.
23 There is no doubt in this case that Trans Union sent to every class member these standardized
24 form communications. The question is whether these communication were in compliance with
25 law. Although the merits of Plaintiff’s claims are not yet squarely before this Court, there is also
26 no doubt that Trans Union has a duty to properly and fully disclose to consumers OFAC alerts
that exist in its files, as well as their right to dispute inaccurate OFAC alerts. *Cortez v. Trans
Union, LLC*, 617 F.3d 688, 711-12 (3d Cir. 2010). Nevertheless, throughout its opposition brief
Trans Union continues to largely ignore the only Court of Appeals authority on this subject,
Cortez, and continues to intimate the same arguments that it lost in *Cortez* – namely that its
OFAC alert does not really affect credit determinations, and it is not really in a consumer’s Trans
Union file because Trans Union obtains OFAC list data through a vendor, Accuity, and that
Defendant is not really responsible for the accuracy of its reports because it tries to pass its own

1 It is also undisputed that Trans Union uses the same procedure (a “name-only” matching
2 logic) to determine whether to include an OFAC alert on any given consumer’s report. The
3 procedure was the same for Ramirez as it was for every member of the class. Because this
4 procedure is so flawed, the OFAC alerts are always inaccurate, and there is no evidence to the
5 contrary. Here, Trans Union prepared inaccurate “consumer reports” for Plaintiff and every
6 member of the class employing its uniform name-only matching procedure for OFAC alerts.²

7 There is nothing unique about these procedures or these communications. They were the
8 same for Plaintiff and every member of the class. Plaintiff’s claims here are not dependent upon

9 statutory responsibilities concerning the OFAC data that it sells to Accuity as well as the users
10 of Trans Union’s reports, such as Dublin Nissan. All these defense argument failed in *Cortez*
11 and will fail again here once this Court considers the merits of Plaintiff’s claims. At the present
12 certification stage, however, and as will be discussed in detail in the reply memorandum, the
13 issue of whether Trans Union made proper and lawful file disclosures to consumers regarding
14 OFAC is the pivotal and common question that applies to every member of the class and that will
15 predominate in this litigation.

16 ² Trans Union assumes erroneously that that Plaintiff’s FCRA claim under section
17 1681e(b), and parallel CCRAA claim under section 1785.14(b), *must* concern *third party* reports
18 *sold* directly by Trans Union, or by one of its resellers, to end users, such as car dealerships. But
19 that is not Plaintiff’s claim here. “Consumer reports” need not be third party reports, or sold or
20 disseminated to anyone, and Trans Union itself has already lost this exact argument before the
21 Ninth Circuit. *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333-34 & n.3 (9th Cir.
22 1995). The FCRA clearly defines “consumer report” to include “*any...communication of any*
23 *information* by a consumer reporting agency [CRA] bearing on a consumer’s credit
24 worthiness...character, general reputation...which is...*expected to be used or collected* in whole
25 or in part for the purpose of *serving as a factor* in establishing a consumer’s eligibility
26 for...credit.” 15 U.S.C. § 1681(a)(d)(1) (emphasis added). This broad definition says nothing
about third party credit reports, as the *Guimond* court pointed out. Here Trans Union admits, as
it must, that it is a CRA which *collected* OFAC information in its consumer files (as it explicitly
tells consumers in its form OFAC letter) and further *expected* such information to be used on
credit reports it provided to financial institutions and others about those consumers for the
purpose of credit-based decisions about those consumers, and minimally Trans Union
communicated that OFAC information in its OFAC letters to every class member. Trans Union
thus prepared “consumer reports” for every class member regardless of whether it sold reports
for all class members to third party users, and regardless of whether those third party reports were
sold via a reseller in one particular format or another. By focusing upon the Dublin Nissan credit
report and the resellers that delivered that report to Dublin Nissan, Defendant is trying to
mischaracterize Plaintiff’s claim.

1 anything else other than Trans Union's uniform name-only matching procedure and boilerplate
2 personal credit reports and form letter communications regarding OFAC. That is precisely why
3 this case is suitable for class treatment.

4 Trans Union would like for this Court to believe that Plaintiff's claims are something far
5 more individualized, because that would self-servingly aid Defendant's challenges to
6 certification, but they are not. Plaintiff's claims do not revolve around the actions and
7 understandings of third parties who resell or use Trans Union's reports, any more than they
8 revolve around whether Ramirez was seeking to buy a red car or a blue one.

9 It is conceivable for consumer-plaintiffs to bring fair credit reporting claims like the ones
10 that Trans Union envisions, which revolve around other procedures or other communications, or
11 which may be more dependent upon a particular type of third party report or upon some unique
12 circumstance or a upon a nuanced actual damages claim, but those are not the claims here.³ At
13 the end of the day, Plaintiff is the master of his lawsuit, and he has elected to bring certifiable
14 statutory damages claims revolving around a common procedure and two common
15 communications concerning OFAC alerts. As will be discussed more fully below, the actual
16 claims brought here are eminently certifiable.

17 **II. DEFENDANT'S CHALLENGES TO TYPICALITY FAIL**

18 Despite Defendant's arguments to the contrary, the claims that Plaintiff actually brings
19 here are entirely typical of those of all other class members. In order to satisfy the requirements
20 of Rule 23(a)(3), a typical representative need only have claims that are "reasonably co-extensive
21 with those of absent class members." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir.
22 1998). Typicality is present when the claims alleged arise from the same course of events, and
23 each class member makes similar legal arguments in support of liability. *Rodriguez v. Hayes*,
24 591 F.3d 1105, 1124 (9th Cir. 2010).

25 ³ For example, Trans Union's opposition brief suggest that Plaintiff's claims here are
26 somehow focused upon Latin-sounding surnames. Dkt. No. 120 at p. 14. Plaintiff, however, has
never made such a claim here. Trans Union says that Plaintiff seeks to pursue a class claim for
consumers who disputed an OFAC alert sold via the reseller ODE via DealerTrack software. *Id.*
at p. 17. Again, Plaintiff has never made such a claim and does not move to certify the class that
Trans Union conjures up for purposes of trying to defeat Plaintiff's certification motion.

1 Here, Plaintiff's claims are not only co-extensive, but they are in fact identical to those
2 of all other class members. Trans Union prepared a file disclosure which it calls a "personal
3 credit report" regarding each member of the proposed class, including Plaintiff. Dkt. No. 110-
4 20 (D.'s Supp. Rog. Resp. at No. 1, 3); Dkt. No. 110-23 (2/28/2011 File Disclosure to Plaintiff).
5 Trans Union prepared these documents using a standardized, uniform procedure which was the
6 same for Plaintiff and all other class members. Dkt. No. 122-1 at 56:10-22 (Revised Redacted
7 Version of O'Connell Dep.); Dkt. No. 122-2 at 72:13-73:9, 203:5-205:20 (Revised Redacted
8 version of Lytle Dep.). Trans Union admits that each of these documents failed to disclose all of
9 the information in class members' files, because none included the OFAC information Trans
10 Union associated with the consumers to whom the disclosures were sent. Dkt. No. 122-2 at 83:2-
11 9, 85:23-86:11 (Revised Redacted Version of Lytle Dep.); Dkt. No. 110-23 (2/28/2012 File
12 Disclosure to Plaintiff). Plaintiff's claim under FCRA section 1681g(a) and the parallel CCRAA
13 provision is thus identical to that of all other class members.

14 Plaintiff is likewise a typical representative of the class for the claims under FCRA section
15 1681g(c), because Trans Union sent the same form letter regarding OFAC information to each
16 member of the class, including Ramirez. Dkt. No. 110-24 (OFAC Letter); Dkt. No. 110-20 (D.'s
17 Supp. Rog. Resp. at No. 1, 3). None of the letters included a statement of rights or informed
18 consumers of their right to dispute the inaccurate OFAC information. Dkt. No. 110-24; Dkt. No.
19 122-2 at 68:14-70:21.

20 Finally, Ramirez's claim under FCRA section 1681e(b) is based upon the same course of
21 events and will be proved based upon the same legal arguments, rendering him an entirely typical
22 representative. Trans Union admits that it collects OFAC information with respect to each class
23 member and expects such information to be used on credit reports for the purpose of credit-based
24 determinations. Dkt. No. 110-24 (OFAC Letter); Dkt. No. 110-20 (D.'s Supp. Rog. Resp. at No.
25 1, 3). Further, Trans Union admits that it used the same name-only matching logic to inaccurately
26 associate OFAC information with Plaintiff that it used to mis-associate OFAC information with
all other class members, and continues to use this name-only procedure to this day. Dkt. No.
122-1 at 56:14-22, 66:12-67:9 (Revised Redacted Version of O'Connell Dep.); Dkt. No. 122-2
at 72:13-73:9; 146:13-18 (Revised Redacted Version of Lytle Dep.). Trans Union communicated
this misleading and inaccurate OFAC information to each class member, including Ramirez.

1 Dkt. No. 110-24 (OFAC Letter); Dkt. No. 110-20 (D.’s Supp. Rog. Resp. at No. 1, 3). Defendant
2 thus prepared consumer reports regarding every member of the class, including Plaintiff. The
3 fact that Defendant *also* separately prepared and sold a report to a third-party end user, and the
4 details of such a transaction, are not essential to the claims here and do not render Plaintiff’s
5 claims atypical.

6 Defendant argues that it has “unique defenses” which render Plaintiff atypical, but such
7 “defenses” relate to claims that Plaintiff does not make. Dkt. No. 120 at pp. 21-22. Furthermore,
8 Defendant’s assertion that Plaintiff made a “false statement” on the credit application submitted
9 to Dublin Nissan is at best a gross exaggeration which has no effect on the typicality of Plaintiff’s
10 claims or his adequacy as a class representative. Trans Union bases its assertion on a single
11 checked box on a joint credit application, which referred equally to Plaintiff’s wife as the primary
12 applicant. Dkt. No. 110-16 (Credit Application). None of Plaintiff’s claims concern Dublin
13 Nissan’s reliance on the existence (or lack thereof) of a prior repossession, and in any event
14 Dublin Nissan’s representative testified that she believed that portion of the credit application
15 pertained to Plaintiff’s wife as the primary applicant.

16 Defendant’s reference to *Soutter v. Equifax Info. Servs, LLC*, 498 F. App’x 260, 264 (4th
17 Cir. 2012) in an attempt to defeat typicality is unpersuasive. Dkt. No. 120 at p. 20. In *Soutter*,
18 the court found the representative plaintiff’s claim to be atypical because the defendant CRA
19 used at least four different methods to produce the reports challenged as inaccurate. 498 F. App’x
20 at 265. In contrast, in this case Defendant used a single method – “name-only” matching logic –
21 for associating OFAC alerts with consumers.

22 Moreover, *Soutter* did not involve any disclosure claims under FCRA section 1681g, or
23 any state law analogue, and thus has no effect whatsoever upon Plaintiff’s disclosure claims here.
24 Nor is there any doubt that the personal credit reports and OFAC letters that Defendant sent to
25 consumers compromising the class were prepared via a single method during the time period
26 relevant to this action. Dkt. No. 122-2 at 83:2-9, 85:23-86:11 (Revised Redacted Version of
Lytle Dep.).

27 In sum, typicality is satisfied because Plaintiff’s and the class’s interests are symmetrical
28 and co-extensive – by proving his claims under the FCRA and CCRAA, Ramirez will also prove
29 the class claims.

1 **III. COMMONALITY IS SATISFIED IN THIS CASE**

2 Next, Trans Union argues that Plaintiff does not satisfy the commonality requirement of
3 Rule 23. Dkt. No. 120 at p. 22. Commonality is satisfied in this case because there is both a
4 “common core of salient facts” and a series of shared legal issues that will result in common
5 answers. *Hanlon*, 150 F.3d at 1019 (citing Fed. R. Civ. P. 23). Commonality is satisfied when
6 claims are based upon a uniform policy or practice by the Defendant. *Wal-Mart v. Dukes*, 131
S. Ct. 2541, 2553 (2011); *Alonzo v. Maximus*, 275 F.R.D. 513, 521 (C.D. Cal. 2011).

7 As described above, Plaintiff’s claims and those of the class are based upon Defendant’s
8 uniform practices and procedures for preparing consumer reports, and for disclosing the contents
9 of consumers’ files. Contrary to Defendant’s assertions, no individualized inquiry is necessary
10 to resolve the common legal questions posed by these uniform practices, nor do individual issues
exist with respect to damages.

11 **A. Disclosure Claims**

12 Plaintiff and the class claim that Trans Union violated FCRA section 1681g and CCRAA
13 sections 1785.10 and 1785.15 by failing to provide complete and accurate disclosure of all
14 information in class members’ files, including information related to OFAC and a statement of
15 rights, including the right to dispute inaccurate OFAC information. Dkt. No. 120 at 1-2.
16 Defendant admits that it maintained a uniform practice and procedure of sending “personal
17 credit reports” to consumers with no reference to OFAC information, despite the fact that Trans
18 Union’s files on these same consumers contained a name considered a potential match to the
OFAC SDN list. Dkt. No. 122-2 at 83:2-9, 85:23-86:11 (Revised Redacted Version of Lytle
19 Dep.); *see, e.g.* Dkt. No. 110-23 (2/28/2011 File Disclosure to Plaintiff). Further, it is
20 uncontested that Trans Union’s subsequent, separate letters to these same consumers regarding
21 OFAC information did not advise consumers of their FCRA or CCRAA rights, including the
22 right to dispute and correct inaccurate information. Dkt. No. 110-24 (OFAC Letter); Dkt. No.
110-20 (D.’s Supp. Rog. Resp. at No. 1, 3).

23 The shared legal issue stemming from this common core of facts is whether these form
24 documents, sent to Ramirez and all other class members, constitute a proper file disclosure under
25 the FCRA and CCRAA. No individualized proof if necessary to resolve this common legal
26 issue, because the “effect” of Trans Union’s disclosures, including the circumstances of when

1 and how they were received by consumers, is irrelevant to determining whether the disclosures
2 were complete and accurate. Courts have routinely affirmed the existence of commonality in
3 FCRA class actions asserting that a CRA failed to provide statutorily-mandated disclosures.
4 *Murray v. GMAC Mortg. Corp.*, 434 F.3d 948, 952-53 (7th Cir. 2006); *Gillespie v. Equifax Info.*
5 *Servs. LLC*, 2008 WL 4614327, at *9 (N.D. Ill. Oct. 15, 2008); *Campos v. Choicepoint, Inc.*,
6 237 F.R.D. 478, 490 (N.D. Ga. 2006); *Williams v. LexisNexis Risk Management, Inc.*, 2007 WL
7 2439463, at *4-6 (E.D. Va. Aug. 23, 2007); *Chajekian v. Equifax Info. Servs., LLC*, 256 F.R.D.
8 492, 498 (E.D. Pa. 2009).

9 **B. Unreasonable Procedures Claims**

10 Plaintiff's claims under FCRA section 1681e(b) and CCRAA section 1785.14(b) likewise
11 present common questions suitable for class-wide resolution. Plaintiff asserts, and Defendant
12 does not contest, that none of the 8,192 class members nationwide is on the OFAC list. Dkt. No.
13 122-1 at 62:25-63:12 (Revised Redacted Version of O'Connell Dep.). In fact, Trans Union has
14 been unable to identify a single instance in which its OFAC alert product accurately identified
15 an individual as a terrorist or drug smuggler actually on the OFAC list. *Id.* Trans Union cannot
16 manufacture individualized accuracy issues given that there is no evidence whatsoever that its
17 OFAC alerts have ever been accurate. *See Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d
18 1036, 1042 (9th Cir. 2012) (affirming existence of commonality in class action claim under the
19 Telephone Consumer Protection Act because, although the defendant argued that there were
20 individualized issues of consent, defendant "did not show a single instance where express consent
21 was given").⁴

22 None of the cases Defendant cites support its assertion that accuracy claims brought under
23 the FCRA and CCRAA lack commonality, because none in fact addresses claims under FCRA
24

25 ⁴ Defendant's reference to common proof regarding Latin-sounding surnames is likewise
26 unavailing. Not only does this argument mischaracterize Plaintiff's claim, it in fact supports
Plaintiff's claim that the use of name-only matching logic is inherently flawed and unreliable,
and consistently leads to inaccurate results. Dkt. No. 119-11 (Cronshaw Decl. at ¶ 9(c))("Even
where the name is not of Spanish derivation, name screening cannot be calibrated to avoid all
unintended matches.").

1 section 1681e(b) or CCRAA section 1785.14(b). Dkt. No. 120 at p. 22.⁵ In reality, courts find
2 no difficulty in determining that class actions under FCRA section 1681e(b) present common
3 questions. *See, e.g., Clark v. Experian Info. Solutions, Inc.*, 2001 WL 1946329, at *2 (D.S.C.
4 Mar. 19, 2001) (holding commonality satisfied and certifying FCRA class action alleging
5 violations of section 1681e(b)); *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 384 (C.D. Cal.
6 2007) (finding commonality satisfied in FCRA class action under section 1681e(b)); *White v.*
7 *Experian Info. Solutions*, No. 05-cv-01070, Dkt. No. 338 (C.D. Cal. Aug. 19, 2008)
8 (commonality satisfied in settlement of class action under FCRA section 1681e(b) and CCRAA
section 1785.14(b)).

9 **C. Damages**

10 Finally, Trans Union argues that Ramirez’s election of the statutory damages remedy is
11 an “end-run” around Rule 23(a)(2) because statutory damages allegedly present individualized
12 issues. Dkt. No. 120 at p. 23. This position has been rejected by federal courts across the country,
13 including the Ninth Circuit, which have frequently held that actions seeking only statutory
14 damages are well-suited for class treatment because no individualized showing of harm is
15 required. *Bateman v. Am. Multi-Cinema, Inc.*, 623 F.3d 708, (9th Cir. 2010); *Acosta*, 243 F.R.D.
16 at 385; *Ashby v. Farmers Ins. Co. of Oregon*, 592 F. Supp. 2d 1307, 1318 (D. Or. 2008).⁶ Thus,
17 Plaintiff’s and the class’s claims for statutory damages present no barrier to a finding of
18 commonality.
19
20

21 ⁵ *Gardner v. Equifax Info. Servs., LLC*, 2007 WL 2261688 (D. Minn. Aug. 6, 2007) and
22 *Klotz v. Trans Union, LLC*, 246 F.R.D. 208 (E.D. Pa. 2007) both involved claims under FCRA
23 section 1681i for failure to properly *reinvestigate* information in a consumer file after a consumer
24 disputed, and did not relate to any uniform procedures for assuring maximum possible accuracy.
25 *Grimes v. Rave Motion Pictures Birmingham, LLC*, 264 F.R.D. 659 (N.D. Ala. 2010) involved a
claim against a movie theater under 15 U.S.C. § 1681c(g) for failure to properly truncate credit
card numbers on receipts.

26 ⁶ *See also* section VII.B., n.11-12, *infra*.

1 **IV. PLAINTIFF HAS ESTABLISHED NUMEROSITY**

2 In an effort to argue that the class is not sufficiently numerous to warrant class treatment,
3 Trans Union attempts to redefine the class by limiting it to what it considers “the most typical
4 population,” thereby excluding most of the class that Plaintiff seeks to represent. Dkt. No. 120
5 at p. 24. The “class” that Trans Union discusses, however, is simply not the one that Plaintiff
6 pleads or moves to certify.

7 Plaintiff decides what the class definition is, not Defendant. Ramirez has defined the
8 class in this case as all persons in the U.S. “to whom Trans Union sent a letter similar in form to
9 the March 1, 2011 letter Trans Union sent to Plaintiff regarding “OFAC (Office of Foreign Assets
10 Control) Database” from February 9, 2010 through the present.” There are 8,192 such persons.
11 They have been identified from Trans Union’s records. Ramirez has also defined a California
12 subclass under the CCRAA, seeking damages and injunctive relief for the 1,518 members of the
13 class who live in California. Those consumers also have been identified from Trans Union’s
14 records. The class is clearly numerous.

15 With respect to Plaintiff’s *disclosure* claims, Trans Union admits that it sent to all 8,192
16 class members (as defined by Plaintiff above) a personal credit report with no OFAC disclosure
17 whatsoever, and then a subsequent OFAC letter with no statement of rights, including the right
18 to dispute the inaccurate OFAC alert. Since the claims revolve around whether these boilerplate
19 documents constitute a proper lawful disclosure, the class must consist of the persons to whom
20 Trans Union sent those documents, and not the 28 people who happened to have a Trans Union
21 report resold to a car dealership by ODE, as Trans Union suggests.

22 The same is true for Plaintiff’s *reasonable procedures* claims under the FCRA and
23 CCRAA. All 8,192 class members had a misleading OFAC alert associated with their name
24 because of Trans Union “name-only” matching logic. Plaintiff has never limited the class to
25 Latin-sounding surnames, those seeking car loans, those who disputed, or those for whom Trans
26 Union reports were resold via ODE, or any other subgroup that Trans Union proposes.⁷

⁷ Trans Union argues with respect to the reasonable procedures claims that it was as
accurate as it could be with its OFAC alerts because the computer system was not sufficiently
fine-tuned to allow it to weed out the false positives. But that argument assumes that the

1 The California class claims track the national class claims. There are 1,518 members in
2 the California subclass. They seek injunctive relief as authorized by the California statute which,
3 as the Court has already determined, has not been preempted by the FCRA. Dkt. No. 45.

4 Plaintiff plainly satisfies the numerosity requirement of Rule 23(a).

5 **V. RAMIREZ IS AN ADEQUATE CLASS REPRESENTATIVE**

6 Trans Union offers no valid reason why Ramirez will not adequately represent the Class,
7 even though it challenges Ramirez's adequacy as a class representative. Defendant cites to no
8 alleged conflict between Plaintiff and the Class (because none exists), and does not assert that
9 Plaintiff is unwilling or unable to vigorously prosecute his claims. Dkt. No. 120 at pp. 24-25.
10 The interests of Plaintiff and the Class are aligned, because as described in section II *supra*,
11 Plaintiff's claims are co-extensive with those of the Class.

12 Defendant suggests that it has a "unique defense" specific to Plaintiff based upon
13 Plaintiff's application for credit to a third party. Dkt. No. 120 at p. 25. As noted above, however,
14 defenses to claims that Plaintiff *does not bring* cannot form the basis for finding him inadequate
15 or atypical. Furthermore, the purported "false statement" referenced by Trans Union and
16 discussed in section II *supra*, is entirely insufficient to disqualify Plaintiff as class representative
17 and Defendant cites no authority suggesting that it is. *See, e.g., Meyer v. Portfolio Recovery*
18 *Assocs., LLC*, 707 F.3d 1036, 1042 (9th Cir. 2012) (affirming adequacy of class representative
19 despite prior convictions for crimes of dishonesty); *Claffey v. River Oaks Hyundai, Inc.*, 238
20 F.R.D. 464, 467 (N.D. Ill. 2006) (class representative's failure to include two creditors on

21 reasonable procedures contemplated by the FCRA include only automated procedures and never
22 require a CRA to actually use a human to determine if the information is accurate. That is a false
23 premise. There is no authority for Trans Union's assumption that it has no obligation to use
24 human eyes to determine if its reports are accurate. Moreover, as discussed in Plaintiff's opening
25 brief, better automated procedures were available, and evidently used by other CRAs which did
26 not identify Ramirez as an SDN in the same car loan transaction, but Trans Union did not bother
to use more sophisticated technology, despite the warning that it received in *Cortez*. *See* Dkt.
No. 122 at pp. 3-5, 9. Rather, Trans Union decided to simply add the word "potential" in front
of the word "match" in describing its OFAC alerts, as if that one qualifying word was a
procedure to assure accuracy. Id. Where the information is as important as these OFAC alerts
and where Trans Union already knows that it has never accurately matched a person to the OFAC
list, a jury could easily find that its procedures were unreasonable and willfully deficient.

1 unrelated bankruptcy petition did not render her inadequate); *McCall v. Drive Fin. Servs.*, 236
2 F.R.D. 246, 250-51 (E.D. Pa. 2006) (felony convictions and false testimony insufficient to render
3 class representative inadequate).

4 Finally, Trans Union's argument that Ramirez is inadequate because his claims are moot
5 must fail. Dkt. No. 120 at p. 25. As set forth in section VI *infra*, Plaintiff's claim for injunctive
6 relief for Defendant's violations of CCRAA section 1785.14(b) is far from moot, because Trans
7 Union continues to use its name-only matching logic to inaccurately mis-associate consumers
8 with the OFAC list. Trans Union's theory that Plaintiff's claims were mooted by its Rule 68
9 offer of judgment has been soundly rejected by the Court, and forms no obstacle to class
certification. Dkt. Nos. 76, 100. Plaintiff is thus an adequate class representative.

10 **VI. A CALIFORNIA SUBCLASS CAN BE CERTIFIED UNDER RULE 23(b)(2)**

11 Trans Union argues that the California subclass's claims cannot be certified under
12 23(b)(2) allegedly because the class has also sought monetary damages. Dkt. No. 120 at pp. 25-
13 26. Simply put, that is wrong. The fact that the subclass has also sought monetary damages does
14 not necessarily preclude certification pursuant to Rule 23(b)(2). The Ninth Circuit acknowledged
15 this in *Wang v. Chinese Daily News, Inc.* 737 F.3d 538, 544 (9th Cir. 2013) where it remanded
16 the case with instructions that the district court could certify an injunctive relief if there was a
17 class member who still worked for the defendant newspaper.⁸ In *Ries v. Arizona Beverages USA,*
18 *LLC*, 287 F.R.D. 523, 542 (N.D. Cal. 2012), which Trans Union cites, Judge Seeborg certified a
19 Rule 23(b)(2) class for declaratory and injunctive relief, while denying certification of the claims
20 for monetary damages and restitution. Judge Whyte reached the same conclusion in *Lanovaz v.*
21 *Twinnings N. Am., Inc.*, 2014 WL 1652338, at *4-6 (N.D. Cal. Apr. 24, 2014); *see also Aho v.*
22 *AmeriCredit Fin. Servs., Inc.*, 277 F.R.D. 609, 619 (S.D. Cal. 2011); *Ackerman v. Coca-Cola*
23 *Co.*, 2013 WL 7044866, at *16-17 (E.D.N.Y. July 18, 2013). Thus even if the Court concludes
24 that it cannot certify the California subclass claims under Rule 23(b)(3), it has the power to certify
the claims for injunctive relief under Rule 23(b)(2).

25 ⁸ Ultimately class certification under Rule 23(b)(2) was denied because no class member
26 still worked for the defendant. *Wang v. Chinese Daily News, Inc.*, 2014 WL 1712180, at *4 (C.D.
Cal. Apr. 15, 2014).

1 Trans Union further argues that the California subclass's claims are moot because Trans
2 Union has stopped sending the OFAC letter separately. Dkt. No. 120 at pp. 26-27. That may
3 moot the claims for injunctive relief under the disclosure claims, but it ignores the California
4 subclass's claim that Trans Union is failing to follow reasonable procedures to assure maximum
5 possible accuracy in their reports. See Dkt. No. 122 at pp. 9-10 (Plaintiff's Motion to Certify
6 Class, describing Trans Union's procedures). Trans Union's procedures for matching consumers
7 to the OFAC list continue to be woefully deficient. Dkt. No. 122-1 at 56:14-22, 66:12-67:9
8 (Revised Redacted Version of O'Connell Dep.); Dkt. No. 122-2 at 72:13-73:9; 146:13-18
9 (Revised Redacted Version of Lytle Dep.). If the California subclass prevails on this claim, the
10 Court should enjoin Trans Union from continuing to use its flawed name-only matching logic
11 procedures when it prepares reports on Californians.

11 **VII. THE COMMON ISSUES HERE WILL PREDOMINATE**

12 Next, Trans Union argues that Plaintiff cannot satisfy the predominance requirement of
13 Fed. R. Civ. P. 23(b)(3). Dkt. No. 120 at pp. 27-31. Trans Union is again mistaken.

13 **A. Disclosure Claims**

14 First, with respect to Plaintiff's improper disclosure claims (under FCRA section 1681g
15 and the parallel claim under CCRAA sections 1785.10 and 1786.15), Trans Union argues that
16 the only reason common issues will allegedly not predominate is because of the "effect" those
17 disclosures may have had upon consumers. Dkt. No. 120 at p. 30. Yet "effect" has nothing to
18 do with the claims actually brought.

19 Trans Union is required to make complete and accurate disclosures to consumers of all
20 information in their files, including OFAC alerts. *Cortez v. Trans Union, LLC*, 617 F.3d 688,
21 711-12 (3d Cir. 2010); 15 U.S.C. § 1681g(a). In this case, it is undisputed that Trans Union sent
22 to 8,192 individuals nationwide (of whom 1,518 are California residents) a personal credit report
23 with no reference to OFAC whatsoever, even though Defendant admitted in subsequent letters
24 to these same class members that their "Trans Union credit file" contained a name considered a
25 potential match to the OFAC list. Dkt. No. 110-20 (D.'s Supp. Rog. Responses at No. 3). It is
26 also clear that the subsequent letters did not advise consumers that they have a right to dispute

1 inaccurate or misleading OFAC information, and did not reference any consumer rights under
2 the FCRA or CCRAA. *See* Dkt. No. 110-24 (OFAC letter).

3 The common and predominating issues, therefore, will revolve around these two form
4 documents sent to all class members. Whether these documents constitute a proper disclosure
5 under the FCRA and CCRAA will require the same proofs for every class members. Trans Union
6 suggests that it should not have to provide a “second” statement of rights with the letter and that
7 the “two mailings” together amount to one proper disclosure. Dkt. No. 120 at p. 30. Plaintiff,
8 by contrast, will show that these documents fail to abide by both the letter and spirit of the
9 disclosure requirements of the FCRA and CCRAA, and deliberately ignore guidance from the
10 Third Circuit Court of Appeals in *Cortez*. No matter the ultimate outcome on the merits of these
11 claims, however, there is no doubt that the predominating issues will be exactly the same for
12 every class member.

13 The “effect” of the personal credit report and subsequent letter upon consumers are
14 simply not elements of the disclosure claims, despite Trans Union’s argument to the contrary.
15 Ramirez and the class here claim that Trans Union’s violations are *willful*, which requires no
16 showing of effect or of actual damages. *Robins v. Spokeo, Inc.*, 742 F.3d 409, 413-414 (9th Cir.
17 2014) (FCRA plaintiffs may recover statutory damages of \$100-\$1,000 for willful violation even
18 absent a showing of actual damages); *Beaudry v. Telecheck Servs., Inc.*, 579 F.3d 702, 705-06
19 (6th Cir. 2009) (with respect to willfulness claim in FCRA class case, holding that “[b]ecause
20 ‘actual damages’ represent an alternative form of relief and because the statute permits a
21 [statutory damages] recovery when there are no identifiable or measurable actual damages, this
22 subsection [1681n] implies that a claimant need not suffer (or allege) consequential damages to
23 file a claim.”).⁹

24 ⁹ *See also Llewellyn v. Allstate Home Loans, Inc.*, 711 F.3d 1173, 1179 (10th Cir. 2013)
25 (“Under [FCRA] § 1681n(a), however, the consumer need not prove actual damages if the
26 violation is willful....”) (quoting *Birmingham v. Experian Info. Solutions, Inc.*, 633 F.3d 1006,
1009 (10th Cir. 2011)); *Blanco v. El Pollo Loco, Inc.*, 2007 WL 1113997, at *2 (C.D. Cal. Apr.
3, 2007) (“section 1681n contains no such requirement” of actual harm).

1 It is also false, however, for Trans Union to suggest that its misleading disclosures
2 concerning OFAC have no effect at all upon consumers. Rather, Trans Union's practices
3 deprived every class member of the exact same valuable information to which they were entitled
4 by law, regarding what information is in their Trans Union files and how they go about disputing
5 inaccurate information. That deprivation is harmful in and of itself, but because it is unlikely to
6 lead to catastrophic damages in and of itself, statutory damages are appropriate here.¹⁰

7 Moreover, courts that have examined similar class claims under the FCRA – where the
8 statute required a CRA to provide certain information to consumers – have found not only that
9 common questions exist, but also that they predominate. *See Williams v. LexisNexis Risk*
10 *Management, Inc.*, 2007 WL 2439463, at *4-6 (E.D. Va. Aug. 23, 2007) (common questions
11 exist and predominate in FCRA case where plaintiff claimed that defendant failed to provide
12 statutorily-required notice under FCRA section 1681k(a)(1)); *Chakejian v. Equifax Information*
13 *Services, LLC*, 256 F.R.D. 492, 498, 500-01 (E.D. Pa. 2009) (common questions exist and
14 predominate in FCRA case where plaintiff claimed that defendant failed to provide statutorily-
15 required notice under section 1681i(a)(6)); *Summerfield v. Equifax Information Services LLC*,
16 264 F.R.D. 133, 139, 142 (D.N.J. 2009) (same).¹¹

17 As the Seventh Circuit explained in a similar context where consumers were not provided
18 with a clear and accurate disclosure required under another section of the FCRA:

19 Rule 23(b)(3) was designed for situations such as this, in which the potential
20 recovery is too slight to support individual suits, but injury is substantial in the
21 aggregate. Reliance on federal law avoids the complications that can plague
22 multi-state classes under state law, and society may gain from the deterrent effect
23

24 ¹⁰ In this sense, this case is unlike *Cortez*, which was driven by a prolonged period of
25 disputes by the consumer to Trans Union (four in total) and by Trans Union's repeated
26 misrepresentations to Ms. Cortez that there was no OFAC alert on her report or file. *Cortez*, 617
F.3d at 699-700. The section 1681i reinvestigation claim related to those repeated disputes in
Cortez is not a claim in this lawsuit.

¹¹ *See also Murray v. GMAC Mortg. Corp.*, 434 F.3d 948, 952-53 (7th Cir. 2006) (class
certification for FCRA statutory damages appropriate in case of form letter that allegedly did not
disclose a "firm" offer of credit); *Cicilline v. Jewel Food Stores, Inc.*, 542 F. Supp. 2d 831, 838-
39 (N.D. Ill. 2008) (FCRA class certified for statutory damages claims arising from uniform
practice of disclosing prohibited information).

1 of financial awards. The practical alternative to class litigation is punitive
2 damages, not a fusillade of small-stakes claims.

3 Refusing to certify a class because the plaintiff decides not to make the sort of
4 person-specific arguments that render class treatment infeasible would throw
5 away the benefits of consolidated treatment. Unless a district court finds that
6 personal injuries are large in relation to statutory damages, a representative
7 plaintiff must be allowed to forego claims for compensatory damages in order to
8 achieve class certification. When a few class members' injuries prove to be
9 substantial, they may opt out and litigate independently. Only when all or almost
10 all of the claims are likely to be large enough to justify individual litigation is it
11 wise to reject class treatment altogether.

12 *Murray v. GMAC Mortg. Corp.*, 434 F.3d 948, 952-53 (7th Cir. 2006) (internal citations omitted)
13 (Easterbrook, J.) ("That actual loss is small and hard to quantify is why statutes such as the Fair
14 Credit Reporting Act provide for modest damages without proof of injury").

15 Trans Union cites no authority to the contrary, and does not even explain why its "effect"
16 argument will be an issue in this litigation, much less a predominating issue. Plaintiff's improper
17 disclosure claims involve the same two form documents and same straightforward legal issues
18 for all class members. Plaintiff has thus satisfied the predominance requirement of Rule 23(b)(3).

14 **B. Unreasonable Procedure Claims**

15 With respect to Plaintiff's claim that Trans Union prepares reports about class members
16 with inaccurate OFAC alerts on them due to its failure to follow reasonable procedures (in
17 violation of FCRA section 1681e(b) and CCRAA section 1785.14(b)), Trans Union again claims
18 that individual issues will allegedly predominate with respect to "causation and fact of damage"
19 and "real world impact." Dkt. No. 120 at p. 28. For the same reasons discussed above with
20 reference to Plaintiff's improper disclosure claims, Plaintiff seeks statutory damages and thus
21 causation and actual damages will simply not be issues at trial, much less predominating issues.

22 It is also disingenuous for Trans Union to suggest that there is no "real-world" impact in
23 being misidentified by a CRA such as Trans Union as being someone possibly on the OFAC list.
24 Although most consumers may not be affected in the same way as Sandra Cortez, the plaintiff in
25 *Cortez v. Trans Union, LLC*, see n. 10, *supra*, an OFAC alert would be damaging to any innocent
26 consumer's credit reputation and could make any consumer legally ineligible to obtain credit.
See Cortez, 617 F.3d at 707; 31 C.F.R. § 535.201.

1 Trans Union makes a related argument that even statutory damages will require
2 individualized inquiries, citing primarily to *Gomez v. Kroll Factual Data, Inc.*, 2014 WL
3 1456530 (D. Colo. Apr. 14, 2014). Dkt. No. 120 at p. 27. The *Gomez* decision is mistaken in
4 this regard and it, and other cases cited by Trans Union, are not binding upon this Court in any
5 event. Multiple federal courts, including the Ninth Circuit, have held that statutory damages are
6 suitable for FCRA class actions and require no individualized or proportionate showing of harm.
7 See *Bateman v. Am. Multi-Cinema, Inc.*, 623 F.3d 708, 718-19 (9th Cir. 2010) (reversing denial
8 of certification in a FCRA case and finding statutory damages case may be certified); *Acosta v.*
9 *Trans Union, LLC*, 240 F.R.D. 564, 571 (C.D. Cal. 2007) (noting that any distinction among
10 claims of class members relating to the damages they suffered “is immaterial here where the
FCRA awards statutory damages”).¹²

11 ¹² See also *Stillmock v. Weis Mkts., Inc.*, 385 Fed. Appx. 267, 273 (4th Cir. 2010) (“Where,
12 as here, the qualitatively overarching issue by far is the liability issue of the defendant’s
13 willfulness, and the purported class members were exposed to the same risk of harm every time
14 the defendant violated the statute in the identical manner, the individual statutory damages issues
15 are insufficient to defeat class certification under Rule 23(b)(3).”); *Gillespie v. Equifax Info.*
16 *Servs., LLC*, 2008 WL 4614327, at *7 (N.D. Ill. Oct. 15, 2008) (“Equifax also argues that
17 individualized proof of willfulness will be required and will predominate over common
18 questions. But willfulness will not turn, as Equifax asserts, on whether class members can show
19 that Equifax deliberately tried to harm them in particular. Rather, it turns on whether Equifax
20 knowingly or recklessly disregarded its statutory obligations under FCRA. See *Safeco*, --- U.S. -
21 --, 127 S.Ct. at 2208-09. That is plainly a common issue in this case, not an individual one, as it
22 concerns a standardized practice that Equifax used. In short, willfulness is perfectly suitable for
23 class-wide proof in this case.”); *Summerfield v. Equifax Info. Servs. LLC*, 264 F.R.D. 133, 142-
24 43 (D.N.J. 2009) (“As such, although willfulness is necessarily a fact-bound inquiry, individual
25 issues will not predominate because the Defendant’s conduct was consistent with its own policy
26 and practice from one consumer to the next. ... Nothing about Plaintiffs’ behavior or conduct
impacts the case; it is Defendant’s actions that are judged.”); *Chakejian v. Equifax Info. Servs.*
LLC, 256 F.R.D. 492, 500 (E.D. Pa. 2009) (“[T]he relevant inquiry in this case is what Equifax’s
state of mind: what information Equifax disclosed or failed to disclose to customers with respect
to its reinvestigation procedures, and whether it knew, or consciously disregarded the fact that
those disclosures were misleading. To prove willfulness here, a consumer-by-consumer inquiry
is not necessary.”); *Harris v. Experian Info. Solutions, Inc., et al.*, CA 606-CV-01808-GRA, Dk
No. 88 (D.S.C. May 29, 2008); *Bonner v. Home123 Corp.*, 2006 U.S. Dist. LEXIS 54418, at *18-
19 (N.D. Ind. Aug. 4, 2006) (“Each class member . . . need not prove individual actual damages
or provide proof of causation to obtain statutory damages [under the FCRA].”); *White v. Imperial*
Adjustment Corp., 2002 WL 1809084, at *15 (E.D. La. Aug. 6, 2002) (finding predominance

1 In the only FCRA class case to reach a jury verdict, the United States District Court for
2 the District of Oregon considered the question of what factors a jury would consider in
3 determining the amount of statutory damages. *Ashby v. Farmers Ins. Co. of Oregon*, 592 F.
4 Supp. 2d 1307, 1318 (D. Or. 2008). The most important factor in determining the amount of a
5 statutory damages award to class members is the importance and value of the rights and
6 protections conferred on the public by FCRA's notice requirements. *Id.* at 1318. Any
individualized harm to each class member is not the focus. The court instructed the jury:

7 The law does not provide any fixed standard by which you are to determine the
8 amount of statutory damages within this range. The law does require that the
9 amount of statutory damages you award be reasonable. Thus, you must apply your
10 own considered judgment in determining the amount of statutory damages per
11 Class member to award and, in doing so, you should consider the nature of the
consumer interest Congress sought to protect in imposing the FCRA notice
requirement as I have already instructed you.

12 *Ashby*, 01-CV-1446 (D. Or. June 22, 2009) (Dkt. No. 589 at 17-18.) This class instruction
13 comports with nearly all cases to have considered this question. With the additional factor for a
14 class in which consumers may have incurred multiple violations, the addition of that factor would
certainly not predominate over the otherwise classwide questions involved.

15 Finally, Trans Union argues that individual issues of accuracy will predominate in this
16 case, thus making class treatment inappropriate, again citing to the District of Colorado's
17 decision in *Gomez*. Dkt. No. 120 at p. 29. But no such issue will predominate in this case. The
18 evidence of record is that Defendant admits that it cannot identify a single person with an OFAC
19 alert on their Trans Union report who is actually on the OFAC list. Dkt. No. 122-1 at 62:25-
20 63:12 (Revised Redacted Version of O'Connell Dep.).

21 Moreover, accuracy is a merits issue in FCRA cases, and one that Trans Union has failed
22 to raise as a defense in this action, despite identifying 19 affirmative defenses in its Answer. *See*

23 requirement met where "focal point of these proceedings will undoubtedly be the defendants'
24 course of conduct in" allegedly failing to maintain reasonable procedures to prevent improper
25 dissemination of credit reports in violation of FCRA); *In re Farmers Ins. Co., FCRA Litig.*, 2006
26 WL 1042450, at *8 (W.D. Okla. Apr. 13, 2006) (finding predominance requirement met in action
seeking statutory damages for defendants' alleged violation of FCRA).

1 Dkt. No. 11; *Price v. Trans Union, LLC*, 737 F. Supp. 2d 281, 285 (E.D. Pa. 2010) (accuracy
2 may be a defense to FCRA section 1681e(b) claims); *Whelan v. Trans Union Credit Reporting*
3 *Agency*, 862 F. Supp. 824, 829 (E.D. NY 1994) (holding that a showing that challenged credit
4 information is accurate defeats FCRA section 1681e(b) claim); *Boothe v. TRS Credit Data*, 768
5 F. Supp. 434, 437 (S.D. N.Y. 1991) (same).

6 It is also important to note that in this case discovery has been bifurcated. Thus after
7 certification, a single expert or summary witness could review identifying information about the
8 8,192 class members and provide further evidence that not a single one of them is actually on the
9 OFAC list. In a similar context, Chief Judge Wilken of this District refused to grant summary
10 judgment to a CRA or to de-certify an FCRA class against that CRA involving more than 35,000
11 consumers simply because trial would require evidence of whether individual class members had
12 a debt reduced to a judgment or initiated the towing transaction for their cars which led to the
13 creation of a debt before their credit report was sold by a CRA to a debt collector in connection
14 with the attempted collection of that debt. *Holman v. Experian Info. Solutions, Inc.*, 2013 WL
15 4873496, at *8 (N.D. Cal. Sept. 12, 2013). Judge Wilken found that any such individualized
16 inquiry would be “limited and discrete” and would not predominate. *Id.* The same can be said
17 here in the event this Court were to determine after the merits discovery phase of this case that
18 an individualized inquiry as to whether class members are on the OFAC list is the type of
19 evidence that is required at trial.

20 In sum, the common issues here will predominate over any individualized inquiries.
21 Accordingly, this Court should find that Plaintiff has satisfied the predominance requirement of
22 Fed. R. Civ. P. 23(b)(3).

23 **VIII. THE SUPERIORITY REQUIREMENT IS SATISFIED HERE**

24 Finally, Trans Union argues that Plaintiff allegedly does not satisfy the superiority
25 requirement of Fed. R. Civ. P. 23(b)(3.) Defendant’s arguments in this regard also fail.

26 Trans Union argues that statutory damages are not a superior method of adjudication here
allegedly because they cause case “manageability” problems. In support of this argument,
Defendant cites only to two non-binding trial court decisions involving claims under the
Americans with Disabilities Act brought against fast food restaurants. Dkt. No. 120 at p. 31

1 (citing *Antoninetti v Chipotle Mex. Grill, Inc.* and *Moeller v Taco Bell Corp.*). These cases are
2 not helpful. As discussed by Plaintiff under the predominance section, *supra*, many federal
3 courts have found in *FCRA class actions* that statutory damages can be a suitable form of relief
4 and have certified such FCRA cases. *See* n. 11-12 and accompanying text, *supra*. Moreover, the
5 only court to have tried an FCRA class case to verdict had no difficulty managing that litigation
6 even though the plaintiffs there sought statutory damages. *Ashby v. Farmers Ins. Co. of Oregon*,
7 592 F. Supp. 2d 1307, 1318 (D. Or. 2008); *see also id.* at 01-CV-1446 (D. Or. June 22, 2009)
(Dkt. No. 589 at 17-18) (jury charge on statutory damages).

8 Importantly, the Ninth Circuit saw no difficulty in permitting an FCRA statutory damages
9 class action to proceed and reversed a trial court decision which refused to certify an FCRA class
10 due to a statutory damages challenges raised by the defendant in that case. *Bateman v. Am. Multi-*
11 *Cinema, Inc.*, 623 F.3d 708, 718-19 (9th Cir. 2010) (reversing denial of certification in an FCRA
12 case and finding statutory damages case may be certified). Trans Union's arguments are
therefore unavailing with respect to FCRA class actions in this Circuit.

13 Trans Union then says that it is supposedly concerned that statutory damages may not be
14 enough compensation for some class members. Defendant would like to have its cake and eat it
15 too. On the one hand, Defendant argues that Plaintiff suffered no harm at all and that consumers
16 are not harmed by its OFAC reporting and disclosure practices. Dkt. No. 120 at pp. 1, 33. On
17 the other, it says that it is concerned that many class members may get too small a recovery to
18 compensate for significant harm in a class action lawsuit, but nonetheless proffers no evidence
of such widespread harm. *Id.* at 31. Trans Union's position is extreme in both regards.

19 Statutory damages are a congressionally created and often used form of relief, and many
20 courts have deemed such relief to be appropriate in FCRA class actions. *See* n. 11-12, *supra*.
21 Even if some class members have more significant damages, a class action is still superior where,
22 as here, the core liability issues are common.¹³ And, of course, class members with significant

23 ¹³ Numerous courts have recognized that the presence of individualized damages issues do
24 not prevent a finding that the common issues in the case predominate and do not by themselves
25 defeat certification of a class. *Stearns v. Ticketmaster Corp.*, 655 F.3d 1013, 1026 (9th Cir.
26 2011); *Allapattah Servs. v. Exxon Corp.*, 333 F.3d 1248, 1261 (11th Cir. 2003), *reh'g en banc*
denied, 362 F.3d 739 (11th Cir. 2004); *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d

1 damages can always opt out of an FCRA statutory damages class action. *See Murray v. GMAC*
2 *Mortg. Corp.*, 434 F.3d 948, 953 (7th Cir. 2006) (“Refusing to certify a [an FCRA] class because
3 the plaintiff decides not to make the sort of person-specific [damages] arguments that render class
4 treatment infeasible would throw away the benefits of consolidated treatment. Unless a district
5 court finds that personal injuries are large in relation to statutory damages, a representative
6 plaintiff must be allowed to forego claims for compensatory damages in order to achieve class
7 certification”). Given the claims and record here, Plaintiff has shown that consolidated treatment
8 is the superior method of adjudicating this case, and Defendant’s purported concerns about class
members getting too little compensation rings hollow.

9 Trans Union also argues that since the FCRA allows for a recovery of attorney’s fees a
10 class action cannot be a superior method of adjudication. Dkt. No. 120 at p. 32. This argument
11 is also extreme, as many courts have found class actions to be appropriate under the FCRA and
12 many other fee-shifting statutes despite the fact that individuals could bring their own claims and
13 recover their attorney’s fees after they succeed.¹⁴ It simply cannot be that class actions are not
14 proper where fee-shifting statutes are involved, as Trans Union suggests. Neither Rule 23 nor
Ninth Circuit precedent even suggests such a thing.

15 To the contrary, in certifying FCRA class actions, several federal courts have rejected the
16 exact argument that Trans Union makes here. *See Chakejian v. Equifax Info. Servs. LLC*, 256
17 F.R.D. 492, 501 (E.D. Pa. 2009) (“The presence of a fee shifting provision in the FCRA does not
18 per se defeat class certification. Although the availability of attorney’s fees to litigants is

19 124, 139 (2d Cir. 2001), *cert. denied sub nom. Visa U.S.A. Inc. v. Wal-Mart Stores, Inc.*, 536
20 U.S. 917 (2002); *Bertulli v. Indep. Ass’n of Cont’l Pilots*, 242 F.3d 290, 298 (5th Cir. 2001); *see*
21 *also See Morgan v. Gay*, 471 F.3d 469, 476 n.7 (3d Cir. 2006) (availability of opting out by
22 unnamed class members assuages any concerns that damage limitation harms other class
members).

23 ¹⁴ In support of this argument, Trans Union again cites to an American with Disabilities Act
24 decision and to two decisions involving hyper-technical claims against merchants which were
25 accused of printing too many credit card numbers on receipts allegedly in violation of the Fair
and Accurate Credit Transactions Act, lawsuits that were so out of favor in California and
elsewhere that Congress changed the law with retrospective effect. Dkt. No. 120 at pp. 31-32.

1 indicative that a class action is by no means the only feasible route for litigants, it remains the
2 superior mechanism here”).¹⁵

3 Finally, without any citation to authority whatsoever, Trans Union argues that Plaintiff
4 cannot satisfy the superiority requirement of Rule 23(b)(3) allegedly because other consumers
5 have not joined this lawsuit. Dkt. No. 120 at pp. 32-33. There is absolutely no reason to deny
6 certification on that basis. As a practical matter, many class actions have a single representative,
7 and Rule 23 requires only a single representative. This is such a case, and one that meets all of
8 the requirements for certification under Rule 23.

9 **IX. CONCLUSION**

10 For the foregoing reasons, Plaintiff respectfully requests that this Court grant his motion
11 for an order certifying this action as a class action on behalf of the proposed national class and
12 California subclass defined herein, certifying Plaintiff Sergio L. Ramirez as a proper
13 representative of the classes, and appointing the law firms of Francis & Mailman, P.C. and
14 Anderson, Ogilvie & Brewer LLP as Class Counsel.

15 Respectfully Submitted,

16 Dated: May 9, 2014

FRANCIS & MAILMAN, P.C.

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22 ¹⁵ See also *Medrano v. WCG Holdings, Inc.*, 2007 WL 4592113, at *6 (C.D. Cal. Oct. 15,
23 2007) (“The Court is not convinced that the fact that an individual plaintiff can recover attorneys
24 fees . . . will result in enforcement of the FCRA by individual actions of a scale comparable to the
25 potential enforcement by way of class action.”); *White v. E-Loan, Inc.*, 2006 WL 2411420, at *9
26 (N.D. Cal. Aug. 18, 2006) (certifying FCRA class action and rejecting claim that availability of
attorney’s fees defeats superiority); *Summerfield v. Equifax Info. Servs. LLC*, 264 F.R.D. 133,
143 (D.N.J. 2009) (FCRA “class actions have not been foreclosed merely by the presence of a
fee shifting provision”).

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